

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* JOHN
DOE and THE STATE OF NEW YORK *ex rel.*
JOHN DOE,

Plaintiffs,

UNITED STATES OF AMERICA

Plaintiff-Intervenor

v.

ALEX SAAVEDRA,

Defendant.

No. 11 Civ. 6425 (AKH)

ATTORNEY'S AFFIRMATION
IN SUPPORT OF DEFENDANT ALEX
SAAVEDRA'S ORDER TO SHOW
CAUSE WHY AN ORDER SHOULD
NOT ISSUE DIRECTING PARTY
WILLIAM HARPER'S ATTORNEY
TO ACCEPT SERVICE OF NOTICE
OF DEPOSITION TO BE TAKEN IN
NEW YORK, OR IN THE
ALTERNATIVE, FOR DISCLOSURE
OF MR. HARPER'S ADDRESS FOR
SERVICE OF PROCESS AND FOR AN
ORDER TO TAKE HIS FOREIGN
DEPOSITION PURSUANT TO 28
U.S.C. § 1783

Bettina Schein, hereby affirms and states as follows:

1. I am an attorney duly admitted to practice in the State of New York and before this Court. This affirmation is submitted in support of defendant Alex Saavedra's application for an Order to Show cause why an Order should not issue directing party William Harper's attorney, Mr. Sadowski to accept service of Notice for Deposition for Mr. Harper to be taken in New York or, in the alternative, should the district court find that Mr. Harper is not a party, for an order directing Mr. Sadowski to provide to counsel Mr. Harper's address for service of process and issuing a subpoena requiring the appearance of Mr. Harper at a foreign deposition pursuant to 28 U.S.C. section 1783.

2. All of the facts set forth in the accompanying Memorandum of Law at pages 1-6 are incorporated herein in their entirety as if fully set forth in the instant affirmation.

3. Attached hereto as Exhibit A is a true and correct copy of the Court's docket sheet in the instant case found on PACER and current through June 16, 2014.

4. Attached hereto as Exhibit B is a true and correct copy of the instructions applicable to taking the deposition of a United States citizen residing in Germany, from the website for the United States Diplomatic Mission to Germany, available at <http://germany.usembassy.gov/english-speaking-services/2008-deposition-instructions.pdf> entitled "Depositions at U.S. Consulate General Frankfurt AM Main, Germany,"

5. Attached hereto as Exhibit C are true and correct copies of emails cited in the Statement of Facts between this office and the government, as well as between this office and counsel for Mr. Harper.

6. Attached hereto as Exhibit D is a true and correct copy of the Stipulation and Order of Settlement and Release executed by the government and counsel for Mr. Harper, S.D.N.Y. Dkt. No. 11-cv-6425, docket no. 27, filed December 18, 2012.

7. Attached hereto as Exhibit E is a proposed Request to Take Evidence Abroad.

8. Attached hereto as Exhibit F is the Notice of Deposition, dated June 12, 2014, which was served on counsel for Mr. Harper

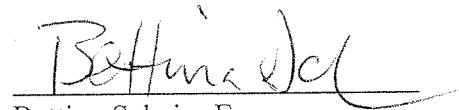
9. For these reasons, and because of our August 15, 2014 discovery deadline, we have no choice but to request this Court's prompt assistance to obtain a ruling that Mr. Harper is a party and thus our service of notice upon his attorneys is sufficient under Fed R. Civ. P. 5(b)(1) and Fed R. Civ. P. 30(b). In the alternative, if the Court finds Mr. Harper is not a party, we respectfully request the Court direct issuance of a subpoena pursuant to 28 U.S.C. § 1783 and direct Mr. Harper, through his attorney, to provide his address so that he may be served in Germany according to the forms from the United States Consulate General in Germany (attached

as Exhibit B) which require, *inter alia*, six weeks advance notice to the Consulate to facilitate a deposition.

WHEREFORE for the foregoing reasons, it is respectfully requested that the Court issue an Order:

- (i) Finding that William Harper is a party and directing Mr. Sadowski to accept service of Notice of deposition in New York on behalf of William Harper pursuant to Fed. R. Civ. Pro. 5(b)(1) and 30;
- (ii) In the alternative, if the Court finds that Mr. Harper is not a party, directing Mr. Sadowski to provide Mr. Harper's address sufficient for service and directing that Mr. Harper appear for deposition in New York at the law offices of the undersigned counsel;
- (iii) In the alternative, if the Court finds that Mr. Harper is not a party, directing the issuance of a deposition subpoena pursuant to 28 USC Section 1783; and
- (iv) Granting such other and further relief that this Court deems just and proper.

Dated: June 17, 2014


Bettina Schein, Esq.